

AMENDED IN SENATE AUGUST 20, 2010

AMENDED IN SENATE AUGUST 16, 2010

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 17, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2188

**Introduced by Assembly Members Bradford and Niello
(Coauthors: Assembly Members Beall, Caballero, Carter, Salas,
and Solorio)**

February 18, 2010

An act to amend Sections 2708 and 3075 of the Unemployment Insurance Code, relating to unemployment insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2188, as amended, Bradford. Unemployment compensation: disability benefits.

Existing law authorizes the Employment Development Department to administer the disability compensation program. Existing law requires the department, among other duties, to make disability benefit payments by checks drawn on a specified bank, as provided.

The bill would remove the requirement to pay by check and thus allow the director to make these payments using electronic technology.

Existing law requires a claim for disability benefits to be supported by a certification of a treating physician or practitioner, and defines a practitioner as a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or as to normal pregnancy or childbirth, a midwife, nurse midwife, or a nurse practitioner.

This bill would modify the definition of practitioner, as prescribed.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2708 of the Unemployment Insurance
2 Code is amended to read:

3 2708. (a) (1) In accordance with the director's authorized
4 regulations, and except as provided in subdivision (c) and Sections
5 2708.1 and 2709, a claimant shall establish medical eligibility for
6 each uninterrupted period of disability by filing a first claim for
7 disability benefits supported by the certificate of a treating
8 physician or practitioner that establishes the sickness, injury, or
9 pregnancy of the employee, or the condition of the family member
10 that warrants the care of the employee. For subsequent periods of
11 uninterrupted disability after the period covered by the initial
12 certificate or any preceding continued claim, a claimant shall file
13 a continued claim for those benefits supported by the certificate
14 of a treating physician or practitioner. A certificate filed to establish
15 medical eligibility for the employee's own sickness, injury, or
16 pregnancy shall contain a diagnosis and diagnostic code prescribed
17 in the International Classification of Diseases, or, where no
18 diagnosis has yet been obtained, a detailed statement of symptoms.

19 (2) A certificate filed to establish medical eligibility of the
20 employee's own sickness, injury, or pregnancy shall also contain
21 a statement of medical facts including secondary diagnoses when
22 applicable, within the physician's or practitioner's knowledge,
23 based on a physical examination and a documented medical history
24 of the claimant by the physician or practitioner, indicating the
25 physician's or practitioner's conclusion as to the claimant's

1 disability, and a statement of the physician's or practitioner's
2 opinion as to the expected duration of the disability.

3 (b) An employee shall be required to file a certificate to establish
4 eligibility when taking leave to care for a family member with a
5 serious health condition. The certificate shall be developed by the
6 department. In order to establish medical eligibility of the serious
7 health condition of the family member that warrants the care of
8 the employee, the information shall be within the physician's or
9 practitioner's knowledge and shall be based on a physical
10 examination and documented medical history of the family member
11 and shall contain all of the following:

12 (1) A diagnosis and diagnostic code prescribed in the
13 International Classification of Diseases, or, where no diagnosis
14 has yet been obtained, a detailed statement of symptoms.

15 (2) The date, if known, on which the condition commenced.

16 (3) The probable duration of the condition.

17 (4) An estimate of the amount of time that the physician or
18 practitioner believes the employee is needed to care for the child,
19 parent, spouse, or domestic partner.

20 (5) (A) A statement that the serious health condition warrants
21 the participation of the employee to provide care for his or her
22 child, parent, spouse, or domestic partner.

23 (B) "Warrants the participation of the employee" includes, but
24 is not limited to, providing psychological comfort, and arranging
25 "third party" care for the child, parent, spouse, or domestic partner,
26 as well as directly providing, or participating in, the medical care.

27 (c) The department shall develop a certification form for bonding
28 that is separate and distinct from the certificate required in
29 subdivision (a) for an employee taking leave to bond with a minor
30 child within the first year of the child's birth or placement in
31 connection with foster care or adoption.

32 (d) The first and any continuing claim of an individual who
33 obtains care and treatment outside this state shall be supported by
34 a certificate of a treating physician or practitioner duly licensed
35 or certified by the state or foreign country in which the claimant
36 is receiving the care and treatment. If a physician or practitioner
37 licensed by and practicing in a foreign country is under
38 investigation by the department for filing false claims and the
39 department does not have legal remedies to conduct a criminal
40 investigation or prosecution in that country, the department may

1 suspend the processing of all further certifications until the
2 physician or practitioner fully cooperates, and continues to
3 cooperate with the investigation. A physician or practitioner
4 licensed by and practicing in a foreign country who has been
5 convicted of filing false claims with the department may not file
6 a certificate in support of a claim for disability benefits for a period
7 of five years.

8 (e) For purposes of this part:

9 (1) "Physician" has the same meaning as defined in Section
10 3209.3 of the Labor Code.

11 (2) "Practitioner" means a person duly licensed or certified in
12 California acting within the scope of his or her license or
13 certification who is a dentist, podiatrist, or a nurse practitioner,
14 ~~after and in the case of a nurse practitioner, after performance of~~
15 ~~a physical examination by a nurse practitioner and~~ collaboration
16 with a physician and surgeon, or as to normal pregnancy or
17 childbirth, a midwife or nurse midwife, ~~or nurse practitioner~~.

18 (f) For a claimant who is hospitalized in or under the authority
19 of a county hospital in this state, a certificate of initial and
20 continuing medical disability, if any, shall satisfy the requirements
21 of this section if the disability is shown by the claimant's hospital
22 chart, and the certificate is signed by the hospital's registrar. For
23 a claimant hospitalized in or under the care of a medical facility
24 of the United States government, a certificate of initial and
25 continuing medical disability, if any, shall satisfy the requirements
26 of this section if the disability is shown by the claimant's hospital
27 chart, and the certificate is signed by a medical officer of the
28 facility duly authorized to do so.

29 (g) Nothing in this section shall be construed to preclude the
30 department from requesting additional medical evidence to
31 supplement the first or any continued claim if the additional
32 evidence can be procured without additional cost to the claimant.
33 The department may require that the additional evidence include
34 any or all of the following:

35 (1) Identification of diagnoses.

36 (2) Identification of symptoms.

37 (3) A statement setting forth the facts of the claimant's disability.
38 The statement shall be completed by any of the following
39 individuals:

40 (A) The physician or practitioner treating the claimant.

1 (B) The registrar, authorized medical officer, or other duly
2 authorized official of the hospital or health facility treating the
3 claimant.

4 (C) An examining physician or other representative of the
5 department.

6 SEC. 2. Section 3075 of the Unemployment Insurance Code
7 is amended to read:

8 3075. The director shall, without presenting vouchers and
9 itemized statements, withdraw from the Disability Fund any sums
10 that he or she deems necessary for the payment of disability
11 benefits for a reasonable future period. The Controller shall draw
12 his or her warrant for any claim presented by the director for the
13 payment and the Treasurer shall pay the warrant. Upon the
14 withdrawal thereof, those sums shall be deposited in a disability
15 benefit payment account in such bank or public depository and
16 under those conditions as the director determines, with the approval
17 of the Department of Finance. The bank or public depository shall
18 be one in which general funds of the state may be deposited, but
19 no public deposit insurance charge or premium shall be paid out
20 of that account. Money in this account shall be used solely to pay
21 disability benefits by the department pursuant to authorized
22 regulations and no other disbursement shall be made from that
23 account, except that amounts erroneously and illegally deposited
24 in that account may be refunded. The procedure prescribed by
25 those regulations shall satisfy and be in lieu of any and all statutory
26 requirements of specific appropriation or other form of release by
27 state officers of money in their custody prior to expenditure that
28 might otherwise be applicable to withdrawals from that account.

29 SEC. 3. This act is an urgency statute necessary for the
30 immediate preservation of the public peace, health, or safety within
31 the meaning of Article IV of the Constitution and shall go into
32 immediate effect. The facts constituting the necessity are:

33 In order to ensure that claimants obtain disability benefits in a
34 timely manner, it is necessary that this act take effect immediately.